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Honorable Howard J. Verner
Coffee County Constable
Post Office Box 413
Elba, Alabama 36323

Constables – Public Records –
Coffee County

Records of constables are subject to
the provisions of the Open Records
Law.

Generally, access to public records
is limited to Alabama citizens.

Dear Mr. Verner:

This opinion of the Attorney General is issued in response to your
request.

QUESTION

Do constables have to comply with
Freedom of Information Act, section 36-12-40 of
the Code of Alabama, requests?

FACTS AND ANALYSIS

Constables are statutory officers as provided for by sections 36-23-1 through 36-23-9 of the Code of Alabama, and serve as executive officers of his or her precinct. ALA. CODE §§ 36-23-1 to 36-23-9 (2013); opinion to Honorable Leo M. Bullock, III, Constable Mobile County, February 6, 1998, A.G. No. 98-00086. Further, constables are county officers, rather than officers of the state. Opinion of Keith Hall, Constable, Jefferson

County, dated March 30, 1990, A.G. No. 90-00188. The powers of constables are purely local and are limited to the county in which the constable is elected. *Id.*; ALA. CODE § 36-23-5 (2013). As independent officers, constables act without supervision with respect to the purchase of goods for their office, and are not subject to supervision by another law enforcement officer or agency. Opinion to Honorable Charles A. Butler, III, Mobile County Constable, September 1, 2015, A.G. No. 2015-062.

Your request states that the authorization for Freedom of Information Act requests are found in section 36-12-40 of the Code of Alabama. As a matter of clarification, the act is a federal provision that is primarily concerned with the several federal agencies making certain information public and available, but the act does not have applicability to state and local entities. *See gen.*, opinions to Honorable Robert G. Britton, Commissioner, Alabama Board of Corrections, dated April 8, 1980, A.G. No. 80-00312; Mr. Stephen T. Etheredge, Attorney at Law, dated April 12, 1978. Hence, section 36-12-40 does not provide the authority for the act.

Section 36-12-40, which is commonly referred to as the Open Records Law, states that “[e]very citizen has a right to inspect and take a copy of any public writing of this state, except as otherwise expressly provided by statute.” ALA. CODE § 36-12-40 (2013). The term “public writing” is not defined in the Code of Alabama. Section 41-13-1 of the Code of Alabama, however, defines a “public record” as follows:

[A]ll written, typed or printed books, letters, documents and maps made or received in pursuance of law by the public officers of the state, counties, municipalities and other subdivisions of government in the transactions of public business and shall also include any record authorized to be made by any law of this state belonging or pertaining to any court of record or any other public record authorized by law or any paper, pleading, exhibit or other writing filled with, in or by any such court, office, or officer.

ALA. CODE § 41-13-1 (2013).

This Office understands that you have received a request from someone out-of-state who is inquiring as to whether you have any of the following: military equipment; interview or recordings of detained

persons (audio or video); number of employees; whether you are sworn or non-sworn officers; and videos, pictures, or logs of traffic stops. As an elected official of the county, a constable meets the definition of public officer or servant as that term is used in section 36-12-1 of the Code of Alabama. ALA. CODE § 36-12-1 (2013) (stating that a public officer includes public officers and servants of counties and municipalities). Public officers and servants are required to maintain correct and accurate books, documents, files, papers and detailed information in reference to the activities or business required to be done or carried on by that public officer. ALA. CODE § 36-12-2 (2013). Accordingly, the documents of constables would be subject to the provisions of the Open Records Law.

As to this particular records request, the Open Records Law permits “every citizen” to inspect and make a copy of public documents. ALA. CODE § 36-12-40 (2013). Although the term citizen is not defined in the statute, Webster’s Third New International Dictionary defines the term as “a member of a state, a native or naturalized person of either sex who owes allegiance to a government and is entitled to reciprocal protection from it and enjoyment of the rights of citizenship.” WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 411 (3rd ed. 2002). It is axiomatic that an Alabama statute that references the rights of a citizen denotes the rights of a person who is a resident of this state.

The Alabama Supreme Court has limited the import of section 36-12-40 to Alabama citizens. *See State ex rel Kernells v. Ezell*, 291 Ala. 440 (Ala. 1973). In *Ezell*, the Court determined that a person over the age of 21 years, who was a bona fide resident citizen and duly qualified elector and voter of Alabama and his county, may inspect a petition for local option election under section 36-12-40. *See also, Stone v. Consol. Publ’g Co.*, 404 So. 2d 678, 681 (1981) (stating that public writings are those “record[s] as [are] reasonably necessary to record the business and activities . . . [of] public officers so that the status or condition of such business and activities can be known by *our citizens*”) (emphasis added). Therefore, the United States Supreme Court, in a public records case, referenced section 36-12-40 and observed that our statute was an example of a state statutory provision that limited access to public records to only the citizens of that state. *McBurney v. Young*, 133 S.Ct. 1709, 1714 (2013).

Consistent with these authorities, access to most public records of this state are limited to Alabama citizens. *Id.* at 1716 (noting that a state may not prohibit an “out of state citizen from accessing records – like title documents and mortgage records – that are necessary to the transfer

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of property [because] the state might run afoul of the Privileges and Immunities Clause"). Previous opinions that determined that out-of-state entities are entitled to public records are hereby overruled. Opinions to David S. Maxey, Attorney for Plumbers & Gas Filters Examining Board, dated March 1, 2001, A.G. No. 2001-107; Honorable Jack Page, III, Member, House of Representatives, dated March 30, 2001, A.G. No. 2001-137.

CONCLUSION

Records of constables are subject to the provisions of the Open Records Law.

Generally, access to public records is limited to requests by Alabama citizens.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Monet Gaines of my staff.

Sincerely,

STEVE MARSHALL
Attorney General
By:


G. WARD BEESON, III
Chief, Opinions Section

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